



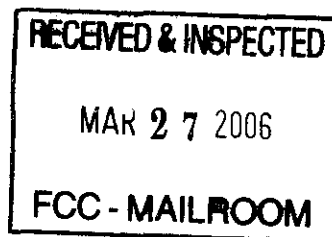
# Oregon

Theodore R. Kulongoski, Governor

## Department of Administrative Services

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March 22, 2006



Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street SE  
Room 8-B201  
Washington, DC 20554

**DOCKET FILE COPY ORIGINAL**

Dear Mr. Martin:

The Oregon Department of Administrative Services ("DAS") respectfully requests the Federal Communications Commission ("FCC") review and overturn the funding denial decisions made by the Schools and Libraries Division ("SLD") of our Funding Year 2005 E-rate Application Number 460103.

The majority of Oregon's schools and libraries affected by this denial fall into the very category that the Commission, through its E-rate program, is designed to serve - low income, rural, hard-to-serve areas. A loss of \$1,224,775.83 from Oregon school and library budgets means it will be even more difficult to meet all of demands in the No Child Left Behind federal mandates and statewide testing initiatives.

I urge you and your fellow commissioners to review the attached material and to restore full funding to our application.

Sincerely,

  
Lindsay A. Ball, Director  
Department of Administrative Services

*Attachment: CC-Docket No. 02-6, In the Matter of Oregon Department of Administrative Services.*

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This appeal has been filed separately  
with the Federal Communications  
Commission; the following documents  
are copies of the filing.

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20544**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>OREGON DEPARTMENT OF</b>	)	<b>CC Docket No. 02-6</b>
<b>ADMINISTRATIVE SERVICES</b>	)	

**Request for Review**

The Oregon Department of Administrative Services ("DAS") respectfully requests the Federal Communications Commission ("FCC") review and overturn the funding denial decisions of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC"). DAS specifically appeals the January 25, 2006 funding denial for the following:

Program Funding Year ("FY"): FY 2005  
Entity Number: 209473  
Form 471 Application Number: 460103  
Funding Request Numbers: 1285458, 1285466, 1285478, 1285486, 1285489,  
1285494, 1285497, 1285516, 1285523  
Total Program Year Pre-discounted Amount: \$1,811,002.68  
Funding Amount Denied: \$1,224,775.83  
Service Provider Name: Qwest Corporation  
Service Provider Identification Number: 143005231<sup>1</sup>

The reason for the denial was "a substantial number of the Letters of Agency or other documentation authorizing the filing of the Form 471 were not provided."<sup>2</sup> This finding by SLD is clearly erroneous and should be reversed. DAS obtained fully executed Letters of Agency ("LOA") from each applicable consortium member prior to the timely submission of DAS' Funding Year 2005 FCC Form 471.

The SLD funding denial decision is without merit and without justification. DAS respectfully requests the Commission overturn the funding denial and return the applications to SLD for full review and consideration on their merits.

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<sup>1</sup> Exhibit 1, USAC/SLD Funding Commitment Decision Letter, January 25, 2006, to Oregon Department of Administrative Services.

<sup>2</sup> Id.

## **A. Background**

On February 13, 2005, DAS filed a Form 471 consortium application for E-rate eligible services for FY 2005, effective July 1, 2005 through June 30, 2006.

DAS' application was for telecommunications services, specifically for frame relay circuits, which are purchased off DAS' state master contract with Qwest Communications ("State Master Contract").

As part of the application process, the consortium lead was required to obtain LOAs from members of the consortium. DAS was the consortium lead for Form 471 Application Number 460103 and did obtain LOAs from its members. Members of the DAS application consortium fall into one of five categories: educational service districts ("ESD"), school districts, schools, library systems, and libraries. To receive the frame relay service, one of the foregoing entities is required to place a telecommunications service order through DAS to Qwest Communications. Qwest Communications generates a single monthly billing for all frame relay circuits purchased through the state master contract. The billing comes to DAS, who in turn re-sends individual invoices to end purchasers, in this case the consortium members, for payment. Then, end purchasers are responsible for paying their share of the Qwest Communications bill directly to DAS, which is responsible for paying the telecommunications service provider.

In FY 2002, FY 2003, and FY 2004, DAS filed similar consortium e-rate applications and collected LOAs in the same manner as FY 2005. LOAs from all the consortium members were provided to SLD for the prior funding years and all prior DAS consortium applications were approved by SLD. SLD never questioned the LOAs submitted for prior years nor questioned the lack of LOAs from entities listed in the application.

Every funding year, DAS verifies LOAs are on file from current purchasers of the telecommunications services. Each year, consortium members may vary slightly depending on who purchases services off the state master contract and who decides to obtain service elsewhere. If there are new purchasers of the service, a LOA is obtained from the eligible entity. No eligible entity can receive the service unless it has submitted a telecommunications service order to DAS for that service. In FY 2004, the LOA

collected was valid for two funding years, FY 2004 and FY 2005. The LOAs followed the format and content suggested by SLD and mirrored the required certifications in FCC Form 471, Block 6.<sup>3</sup> SLD accepted the LOAs for FY 2004.

The review of the DAS FY 2005 Form 471 Application started with the initial Program Integrity Assurance (“PIA”) review contact on October 13, 2005.<sup>4</sup> In all, there were twelve PIA numbered requests that spanned over a period from October 13, 2005 to December 23, 2005, and one PIA confirmation letter dated December 29, 2005, listing information needed to complete the review. The PIA reviewer requested:

- LOAs from two education service districts listed in the application.
- An explanation about the relationship of a specific school district and an educational service district.<sup>5</sup>
- Copies of all LOAs collected by the Consortium lead, a matrix of the entities listed in Worksheet A and their relationship to individual schools/school districts.<sup>6</sup>
- Information about three education service districts using facilities and the associated funding.<sup>7</sup>
- A copy of the contract showing the fixed costs.<sup>8</sup>
- A signed contract, invoice, bill or similar documentation validating that the education service districts were not receiving service if there were no dollars involved with two educational service districts.<sup>9</sup>
- A break down of funding associated with specific school districts associated with the two education service districts who were not receiving funding.<sup>10</sup>
- Explanations about how entities provision services under the State Master Contract.<sup>11</sup>

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<sup>3</sup> FCC Form 471, OMB No. 3060-0806, at Block 6 (November 2004); Exhibit 2, Department of Administrative Services’ Letter of Agency for FY 2004 and FY 2005.

<sup>4</sup> Exhibit 3, October 13, 2005, USAC/SLD Program Integrity Assurance Request #1, and DAS’ response.

<sup>5</sup> Exhibit 3, October 13, 2005, USAC/SLD Program Integrity Assurance Request #1, and DAS’ response; Exhibit 4, October 14, 2005, USAC/SLD Program Integrity Assurance Request #2, and DAS’ response; and Exhibit 5, October 17, 2005, USAC/SLD Program Integrity Assurance Request #3, and DAS’ response.

<sup>6</sup> Exhibit 6, October 21, 2005, USAC/SLD Program Integrity Assurance Request #4, and DAS’ response.

<sup>7</sup> Exhibit 7, November 2, 2005, USAC/SLD Program Integrity Assurance Request #5, and DAS’ response.

<sup>8</sup> Exhibit 8, November 8, 2005, USAC/SLD Program Integrity Assurance Request #6, and DAS’ response.

<sup>9</sup> Exhibit 10, November 18, 2005, USAC/SLD Program Integrity Assurance Request #8, and DAS’ response; and Exhibit 11, November 18, 2005, USAC/SLD Program Integrity Assurance Request #9, and DAS’ response.

<sup>10</sup> Exhibit 9, November 16, 2005, USAC/SLD Program Integrity Assurance Request #7, and DAS’ response; and Exhibit 11, November 18, 2005, USAC/SLD Program Integrity Assurance Request #9, and DAS’ response.

<sup>11</sup> Exhibit 11, November 18, 2005, USAC/SLD Program Integrity Assurance Request #9, and DAS’ response.

- A configuration diagram of the State's backbone network showing on-premise equipment, all other components including internal connection that directly connect to these components and specific demarcations between the Applicant's local communications facilities and the telecommunications or Internet Access Service.<sup>12</sup>
- LOAs from all entities listed in Worksheet A.<sup>13</sup>

DAS complied with each request, including an October 24, 2005 mailing of a complete set of the consortium member LOAs. This mailing contained a sample letter of agency used by DAS, a matrix of the participating entities with their associated worksheet number, a listing of the participating ESDs or the associated school districts participating schools, and signed LOAs from each of the eighty-five ESDs, school districts, schools, libraries, or library systems who are receiving service off the State Master Contract.

On December 15, the PIA reviewer, Douglas May ("May") asked DAS for LOAs "for each of the schools that appear in Worksheet A of Application 460103. In the event that these schools are controlled by a higher level, such as a school district, the higher level's LOA will be sufficient." The PIA reviewer went on to state:

"You provided LOAs for the ESDs not for the Districts. The FCC directed SLD in the Clackamas Order to get letters of agency from each of the levels in the consortium to ensure a *continuous stream of knowingness from the consortium leader down to the recipient of service.*"<sup>14</sup> (emphasis added)

On December 22, DAS' sent the following response to May:

"Letters of agency for all school districts, education services districts and libraries/library systems that are the recipient of service in the State's e-rate application #460103 have been submitted to you on October 24, 2005."<sup>15</sup>

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<sup>12</sup> Id.

<sup>13</sup> Exhibit 12, December 14, 2005, USAC/SLD Program Integrity Assurance Request #10, and DAS' response; Exhibit 13, December 15, 2005, USAC/SLD Program Integrity Assurance Request #11, and DAS' response; Exhibit 14, December 23, 2005, USAC/SLD Program Integrity Assurance Request #12, and DAS' response.

<sup>14</sup> Exhibit 13, December 15, 2005, USAC/SLD Program Integrity Assurance Request #11, and DAS' response.

<sup>15</sup> Id.

May followed up on December 23, with a request identical to the December 14 request with the exception of an added paragraph which read: “As per your response on December 22, 2005; the LOAs submitted on October 24, 2005 only included *district LOAs for the Clackamas ESD, Harney ESD and North Central*.”<sup>16</sup> (*emphasis added*)

DAS explained to May that LOAs were not obtained nor submitted for Clackamas or Harney ESD. Clackamas ESD did not purchase frame relay services off the state master contract and therefore was not a consortium member. Clackamas ESD was listed in FCC Form 471, Block 4, Discount Calculation Worksheet because two of its member school districts were purchasers of the service and are members of the consortium. Signed LOAs from the two member school districts were supplied to May on October 24. No dollar amounts were requested for Clackamas ESD.

Harney ESD was both a purchaser of the frame relay service and an internet service provider to its member school districts. To avoid any conflict of interest, Harney ESD elected not to participate in the State’s consortium application. Signed LOAs from its member school districts were supplied to May on October 24. No dollar amounts were requested for Harney ESD.

North Central ESD was a purchaser of the service and a letter of agency was submitted to the reviewer. North Central ESD provides frame relay service on behalf of the ESD and Condon School District. An LOA from the Condon School District was submitted to the Reviewer on October 24.

May left a voice message on December 23, and DAS responded on December 27 indicating all LOAs had previously been sent. May sent a confirming letter dated December 29 citing what additional materials were needed to complete the review.<sup>17</sup>

On January 25, 2006, SLD issued its funding commitment decision letter denying the requested \$1,224,775.83 in the DAS’ 471 Application Number 460103 for Funding Year 2005.<sup>18</sup> The reason given was “because a substantial number of the Letters of

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<sup>16</sup> Exhibit 14, December 23, 2005, USAC/SLD Program Integrity Assurance Request #12, and DAS’ response.

<sup>17</sup> Exhibit 15, DAS’ December 27, 2005, e-mail and USAC/SLD Program Integrity Assurance letter dated December 29, 2005, itemizing additional information required

<sup>18</sup> Exhibit 1, USAC/SLD Funding Commitment Decision Letter, January 25, 2006, to Oregon Department of Administrative Services.

Agency or other documentation authorizing the filing of the Form 471 were not provided.”

## ***B. Argument***

For the reasons set forth below DAS believes SLD’s funding denial decisions should be reversed and the applications remanded to SLD for full consideration of funding.

### **a. Clackamas ESD & Harney ESD Denial**

#### ***i. SLD’s Unreasonable Interpretation of the Clackamas Order***

SLD’s January 25, 2006 denial of DAS’ application indicates that: “[f]unding was denied because a substantial number of the Letters of Agency or other documentation authorizing the filing of the Form 471 were not provided.”<sup>19</sup> May stated in both the December 15, 2005<sup>20</sup> and the December 23, 2005<sup>21</sup> correspondence that “the FCC directed SLD in the Clackamas Order to get letters of agency from each of the levels in the consortium to ensure a continuous stream of knowingness from the consortium leader down to the recipient of service.”

In the *Clackamas Order*<sup>22</sup> the Commission reviewed a decision by the SLD denying Clackamas’ application for discounted services under the schools and libraries universal service support mechanism. In its denial, SLD found that Clackamas did not have permission to act on behalf of entities listed in the consortium application and, therefore, Clackamas did not qualify for funding. After reviewing the record, the Commission concluded that “a more thorough examination of the Clackamas application”<sup>23</sup> was warranted and Clackamas’ application was remanded for further fact-finding. The Commission went on to state that “SLD may find, upon review of the letters

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<sup>19</sup> Exhibit 1, USAC/SLD Funding Commitment Decision Letter, January 25, 2006, to Oregon Department of Administrative Services.

<sup>20</sup> Exhibit 11, November 18, 2005, USAC/SLD Program Integrity Assurance Request #9, and DAS’ response.

<sup>21</sup> Exhibit 12, December 14, 2005, USAC/SLD Program Integrity Assurance Request #10, and DAS’ response.

<sup>22</sup> Exhibit 16, *Request for Review by Clackamas Education Service District, Marylhurst, Oregon, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-147541, CC Docket No. 96-45 and CC Docket No. 97-21.

<sup>23</sup> *Id.*, pg. 4.



of agency from the Tech Centers, and additional information from the school, that the school districts have properly given authority to the Tech Centers to act on the school's behalf, and that the Tech Centers exercised that authority by participating in the OPEN consortium."<sup>24</sup>

The *Clackamas Order* makes no mention that SLD was to obtain LOAs from "each level in the consortium" to "ensure a continuous stream of knowingness from the consortium leader down to the recipient of service."<sup>25</sup> Rather, the Commission's findings in the *Clackamas Order* centered on whether Clackamas had authority to act on behalf of the entities listed in the consortium application. Accordingly, the issue is whether an entity has authority to act on behalf of those entities listed in the consortium application, not to "ensure a continuous stream of knowingness from the consortium leader down to the recipient of service." As described in DAS's second argument (Section B.a.ii), DAS has already supplied to SLD LOAs from the recipients of service.

Finally, in its conclusion, the Commission held that because of the complexity of Clackamas' multi-tier consortium, a more thorough examination of the application was warranted.<sup>26</sup> Likewise, DAS' application involves a multi-tier consortium application similar to the Clackamas application and warrants a more thorough examination.

SLD interpretation of the *Clackamas Order* in DAS' application is far more specific than the Commission order and clearly engaged in policymaking beyond its charter of administering FCC rules. Therefore, SLD's funding denial decision should be reversed and DAS' application remanded to SLD for full consideration of funding.

#### ***ii. DAS Supplied LOAs from Recipients of Service***

Even if SLD's interpretation of the Commission's finding in the *Clackamas Order* is correct, DAS believes that it fulfilled SLD's request. The PIA reviewer stated in a follow-up request for additional LOAs:

"The FCC directed SLD in the Clackamas Order to get letters of agency from each of the levels in the consortium to ensure a *continuous stream of*

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<sup>24</sup> *Id.*

<sup>25</sup> Exhibit 13, December 15, 2005, USAC/SLD Program Integrity Assurance Request #11, and DAS' response.

<sup>26</sup> Exhibit 16, *Request for Review by Clackamas Education Service District, Marylhurst, Oregon, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-147541, pg. 4, CC Docket No. 96-45 and CC Docket No. 97-21.

*knowingness from the consortium leader down to the recipient of service.”*<sup>27</sup> (emphasis added)

DAS contends that if the *Clackamas Order* required a continuous stream of knowingness from the consortium leader down to the recipient of service, DAS fulfilled that requirement. To DAS’ knowledge, SLD never defined nor presented a position on what constituted a “continuous stream of knowingness from the consortium leader down to the recipient of service.”<sup>28</sup> Given SLDs ambiguity regarding what constituted the recipient of service, it is reasonable to maintain that the recipient of service is equivalent to the purchaser of service. SLDs lack of clarity through its training materials and instructions online invites an applicant to make its own determination.

Regarding certifications and LOAs, the *Clackamas Order* states that [o]n Form 471:

*“applicants must certify that the schools and libraries they represent have secured access to all the resources...necessary to make effective use of the services purchased and that they have authority to submit the request on behalf of the entities included in the application.”*<sup>29</sup> (emphasis added)

Schools and libraries who are part of the DAS’ consortium application represent a mix of education service districts, school districts, schools, libraries, and library systems who purchase frame relay services off of a state master contract. By themselves, education service districts, school districts, libraries, and library systems do not have individual free and reduced lunch number – those numbers are derived from the individual schools. The application process dictates that to arrive at a statewide discount average rate schools within the jurisdictional areas of the educational service district, school district, library or library systems that purchase the frame relay circuits must be listed along with the school’s enrollment counts and free and reduced lunch program participation. Not all entities that are listed in the FCC Form 471, Block 4, Discount Calculation Worksheet A, are purchasers of services for which e-rate discounts are

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<sup>27</sup> Exhibit 13, December 15, 2005, USAC/SLD Program Integrity Assurance Request #11, and DAS’ response; Exhibit 14, December 23, 2005, USAC/SLD Program Integrity Assurance Request #12, and DAS’ response.

<sup>28</sup> *Id.*

<sup>29</sup> Exhibit 16, *Request for Review by Clackamas Education Service District, Marylhurst, Oregon, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-147541, pg. 2.

sought.<sup>30</sup> The entities listed in FCC Form 471, Block 4, Discount Calculation Worksheet A are listed solely to arrive at a simple statewide discount average for all consortium members.<sup>31</sup> As such, it is incorrect to assume that an entity listed in FCC Form 471, Block 4, Discount Calculation Worksheet A is a purchaser of the service. FCC Form 471, Block 5, Discount Funding Request calculations for the cost of the service and the e-rate discounts are based on actual purchasers – entities who have placed a telecommunications service order for the frame relay circuit, who received a billing for that circuit, and who will receive the e-rate discount reimbursement for that circuit.

For example, if an education service district places an order with DAS for its frame relay circuit purchased off the State Master Contract, the ESD will automatically be included in DAS' consortium application unless the ESD elects to withdraw from the consortium. An LOA is obtained from that ESD. When it is time to file FCC Form 471, DAS builds Block 4, the Discount Calculation Worksheet. At that point, if the purchaser is an ESD, DAS must list all the schools within the ESDs jurisdiction to arrive at a simple e-rate discount rate for that ESD. This is done for all the other consortium ESDs and school districts that are purchasing frame relay circuits off the state master contract. When all the entries are made to Block 4, an average statewide e-rate discount rate is calculated for DAS. Next, DAS builds FCC Form 471, Block 5, Discount Funding Requests. In FCC Form 471, Block 5, the total monthly frame relay circuit costs for the e-rate eligible purchasers' costs are calculated and entered into Item 23a of Block 5; total annual costs entered into Item 23i, the statewide e-rate discount rate listed in item 23j, and a total e-rate discount funding request amount is determined. FCC Form 471, Block 5 calculations are based solely on entities who purchase the service and who would receive the e-rate discounts. The service provider's monthly invoice is passed on only to the purchaser. Payment of that bill is the responsibility the purchaser, and it is the purchaser who receives the e-rate discount reimbursement in DAS' application. Not all entities listed in FCC Form 471, Block 4 are purchasers of the service.

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<sup>30</sup> Exhibit 17, DAS' Block 4 Hierarchy, showing relationships of Education Service Districts, School Districts, and Schools.

<sup>31</sup> Id.

In fact, in the present situation, Harney ESD and Clackamas ESD are neither applicants for discounts, nor are they purchasers of service for e-rate purposes. As such, SLD's request for LOAs from them is erroneous. DAS provided all the LOAs from the eligible recipients that actually purchased services and *would receive discounts through* DAS' application.

For Clackamas ESD, two school districts, Molalla River School District 35 and Oregon Trail School District 046, are purchasers of service and are eligible to receive e-rate discounts in DAS' application. LOAs were obtained from both Molalla River School District 35 and Oregon Trail School District 046. As stated in the *Clackamas Order*, Molalla River School District 35 and Oregon Trail School District 046, not Clackamas ESD, are the applicants that "must certify, among other things, that the schools and libraries they represent have secured access to all of the resources.....necessary to make effective use of the services purchased and that they have authority to submit the request on behalf of the entities included in the application."<sup>32</sup> Clackamas ESD does not represent the aforementioned school districts in the e-rate application, it is not the purchaser of their service, and it is not the entity applying for the e-rate discount. Clackamas ESD was only listed in FCC Form 471, Block 4, Discount Calculation Worksheet to arrive at the aggregate discount rate for the two school districts (Molalla and Oregon Trail) who are purchasers of the service.

The second district, Harney County ESD, is both a service provider and a purchaser of service. But, Harney County ESD is not applying for an e-rate discount. SLD's directive to educational service agencies is that they cannot be both an applicant and a service provider in the same application. Even though that is not the case here, Harney County ESD voluntarily removed itself from the DAS application to avoid any potential conflict of interest or appearance of impropriety. Harney County ESD was listed in FCC Form 471, Block 4, Discount Calculation Worksheet only to build an average discount rate. Member districts of Harney County ESD did supply signed LOAs and are purchasers of the service. Harney County ESD is not part of the FCC Form, Block 5, Discount Funding Requests calculations.

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<sup>32</sup> Exhibit 16, *Request for Review by Clackamas Education Service District, Marylhurst, Oregon, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-147541, pg. 2.

Furthermore, as stated in the *Clackamas Order*, Section 254(h)(1)(B) of the Act limits discounts to services provided in response to bona fide requests made for services to be used for educational purposes.<sup>33</sup> The certification requirement is aimed at achieving compliance with section 254(h)(1)(B) by ensuring that discount requests are *bona fide* requests.<sup>34</sup> This also serves to eliminate waste, fraud, and abuse in the schools and libraries universal service support mechanism.<sup>35</sup> With this in mind, DAS fails to see how submission of LOAs for those entities that actually purchased service and have applied for an e-rate discount does not constitute a “continuous stream of knowingness from the consortium leader down to the recipient of service.”<sup>36</sup> Consequently, SLD’s funding denial decision is based on the foregoing, it should be reversed and the application remanded to SLD for full consideration of funding.

***iii. Requesting LOAs from Non-Purchasers of Services is an Undue Legal Liability and Burden***

Under FCC Form 471, LOAs contain twelve items, which an entity must certify. SLD instructions require LOAs to be obtained from the recipient of service. If, as SLD maintains, all entities in FCC Form 471, Block 4, Discount Calculation Worksheet, are required to submit a LOA, both non-purchasing and purchasing entities in DAS’ application must certify the following:

- Our entity has secured access ...to all the resources, including computers, training, software, internal connections, maintenance and electrical capacity necessary to use the *services purchased effectively*. (emphasis added)
- The extent that the Billed Entity is passing through the non-discounted charges for the *services requested* that the entities I represent have secured access to all of the resources to pay the non-discounted charged for eligible services from funds to which access has been secured in the current funding year. (emphasis added)
- Service the school, library or district *purchases* will be used solely for educational purposes and will not be *sold, resold, or transferred*... (emphasis added)

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<sup>33</sup> *Id.*

<sup>34</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>35</sup> 47 C.F.R. § 54.702(h).

<sup>36</sup> Exhibit 13, December 15, 2005, USAC/SLD Program Integrity Assurance Request #11, and DAS’ response; Exhibit 14, December 23, 2005, USAC/SLD Program Integrity Assurance Request #12, and DAS’ response.

- The school, school district, library, has complied with all program rules...and...failure to do so may result in *denial of discount funding and/or cancellation of funding commitments*. (emphasis added)
- I will retain required documents for a period of at least five years after the last day of *service delivered*. (emphasis added)
- That I am authorized to *order* telecommunications services and other support services for the eligible entity covered by this Letter of Agency. (emphasis added)
- That all information in the Letter of Agency is true and correct to the best of the signer's knowledge.
- That the *entities that will be receiving discounted services* under this Letter have complied with the terms, conditions, and purposes of the program. (emphasis added)

These certifications pose an unreasonable and undue legal liability for those entities that are neither purchasers of the services nor recipients of e-rate reimbursements from DAS' application. As indicated in italics above, certifications relate to purchasing and ordering of service (Block 5), not to who is listed in FCC Form 471, Block 4 for calculating the e-rate discount rate. Given that certifications serve to ensure that discount requests are bona fide requests and to eliminate waste, fraud, and abuse in the schools and libraries universal service support mechanism,<sup>37</sup> attestations from those who are directly benefiting from the e-rate discounts, i.e., the purchasers, should be sufficient. Requiring schools, school districts, educational service districts that: (i) did not order the service; (ii) are not responsible for paying for the service; (iii) do not receive e-rate discounts on the service; (iv) do not represent the entity purchasing service; (v) and have no control over the cancellation of that service, to certify and assume LOA liabilities is contrary to the intent of 47 U.S.C. Section 254.

Hence, because SLD's funding denial decision is premised on aforementioned it should be reversed and the application remanded to SLD for full consideration of funding.

**b. Oregon ESDs have Statutory Authority to Sign LOAs on behalf of Participating School Districts and Schools**

SLD, in its denial of DAS' application, stated that "a substantial number of the Letters of Agency or other documentation authorizing the filing of the Form 471 were not

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<sup>37</sup> 47 C.F.R. §54.702(h).

provided.” Preceding SLD denial, PIA correspondence dated December 29, 2005 reveals that LOAs were received from various ESDs but not from the districts associated within the ESDs.<sup>38</sup>

Federal law defines educational service agencies, or as known in Oregon as ESDs, as a “regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies.”<sup>39</sup> While FCC rules do not specifically define or address ESDs, FCC rules govern the program that requires USAC to determine whether an ESD provides elementary or secondary education, as determined under state law. As such, USAC determines whether an ESD is eligible to receive USAC support as an applicant.

Oregon’s K-12 educational structure consists of schools, school districts and ESDs. Oregon ESDs statutory mission “is to assist school districts and the Department of Education in achieving Oregon’s educational goals by providing equitable, high quality, cost-effective and locally responsive educational services at a regional level.”<sup>40</sup> There are twelve ESDs in Oregon. Their boundary districts are determined by county lines and school districts within those counties are assigned to the ESD. ESDs have statutorily prescribed boards of directors who are responsible for overseeing the districts operations, policies, and practices. ORS 334.125, subsection (4) reads: “with the approval of the component school districts through the resolution process described in ORS 334.125, the board may: (e) Plan and provide for educational communication and distribution services, including telecommunications systems.” Every year, through the annual budgetary approval process, the ESD boards carry out the provisions of this statute. In fact, SLD’s “Eligibility Table for Educational Service Agencies” described Oregon ESDs as authorized by state law and eligible for e-rate support.<sup>41</sup>

As provided in ORS 334.125(4)(e), Oregon ESDs have adequate state statutory authority for USAC e-rate support eligibility. In fact, SLD’s own website containing the eligibility table for ESDs maintains that Oregon ESDs are authorized by the State of

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<sup>38</sup> Exhibit 18, ORS 334.005, 334.010, 334.020, and 334.125 relating to education service districts.

<sup>39</sup> 20 U.S.C. §7801(17).

<sup>40</sup> Exhibit 18, ORS 334.005, 334.010, 334.020, and 334.125 relating to education service districts.

<sup>41</sup> Exhibit 19, SLD online instructions regarding Educational Service Agencies; Exhibit 20, SLD online instructions regarding Eligibility Table for Educational Service Agencies.

Oregon and are eligible for universal service fund support.<sup>42</sup> In DAS' application, LOAs were gathered for those Oregon ESDs that were recipients of service. Hence, LOAs are not required from the school districts or schools listed in FCC Form 471, Block 4 because *ESDs have the statutory authority to provide for telecommunications systems on their schools' behalf*. LOAs from the participating ESDs were delivered to the SLD reviewer.

Therefore, to the extent SLD's funding denial decision was based on the foregoing, it should be reversed and the application remanded to SLD for full consideration of funding.

**c. DAS Reasonably Relied on USAC Prior Conduct**

DAS has filed similar consortium e-rate applications in Funding Years 2002, 2003 and 2004 and collected LOAs in the same manner as Funding Year 2005. Prior year applications were prepared in the same manner as the Funding Year 2005 application. Copies of LOAs were supplied to SLD during the prior year reviews. All prior year DAS consortium applications were approved by SLD and no issues were raised about the LOAs. In FY 2004, the LOA collected was valid for two funding years, FY 2004 and FY 2005, as permitted under SLD guidelines. The LOAs for FY 2005 and prior years followed the format and content suggested by Schools and Libraries Division and mirrored the certifications applicants are required to make in FCC Form 471, Block 6.<sup>43</sup>

In line with the Commission findings in the *Pasadena Order*,<sup>44</sup> DAS reasonably relied on the fact that its funding had been approved in prior years, and that such funding requests were virtually identical to the request for Funding Year 2005. To this day, SLDs guidance on obtaining LOAs is extremely limited. Moreover, there is little advice or assistance on the SLD online web pages or through SLD training materials regarding a definition of what constitutes "a continuous stream of knowingness from the consortium leader down to the recipient."<sup>45</sup> The only known instructions available are to the contents

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<sup>42</sup> *Id.*

<sup>43</sup> FCC Form 471, OMB No. 3060-0806, at Block 6 (November 2004).

<sup>44</sup> *Request for Review by Pasadena Unified School District, Pasadena California, School and Libraries Universal Service Support Mechanism*, File No. SLD-399355, 408239,408707, 415257, pg. 5.

<sup>45</sup> Exhibit 21, SLD online instructions for letters of agency for consortia; Exhibit 22, SLD Train-the-Trainer training material, September 9-10, 2002, "Avoiding Common PIA Errors", slide 8; Exhibit 23, SLD Train-the-Trainer training material, September 24-26, 2003, "Consortia", slides 2 and 4.



of the LOAs and as presented earlier, the attestations made in the LOAs relate to the receipt of service, not to the discount calculation. Exhibits 21, 22 and 23 are the sum total of instructions given to applicants on LOAs. None of these instructions define recipient of service nor a continuous stream of knowingness. At the minimum SLD should have more clearly communicated the problem and used reasonable efforts to allow correction of an unclear requirement.

Accordingly, SLD's funding denial decision should be reversed and the application remanded to SLD for full consideration of funding.

**d. Denying Application Contrary to Statutory Goal of Universal Service**

Some of the main goals of universal service, as mandated by the 1996 Act, are to promote the availability of quality services at just, reasonable, and affordable rates; increase access to advanced telecommunications services throughout the nation; advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas; with specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.

SLD's denial of DAS' FY 2005 application was not due to waste, fraud or abuse, but an alleged violation of a procedural category and that there was an absence of written procedures available to ensure program compliance. SLD's unpredictable denial of DAS' application, without adequately inquiry or explanation, will result in a loss of \$1,224,775.83 in funding for Oregon schools. Most of these schools are located in low income, rural, or in high cost areas that can not afford access to advanced telecommunications services without e-rate discounts. SLD's decision not only will have a severe impact on Oregon schools, but it is also contrary to the statutory goals of universal service. Thus, SLD's funding denial decision should be reversed and the application remanded to SLD for full consideration of funding.

**C. Conclusion**

The SLD erred in denying DAS' Form 471 application. DAS has fully executed all required LOAs from each member organization. The LOAs confer the appropriate

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authority for DAS to seek discounts on e-rate eligible services on behalf of member organizations. To deny DAS' application would be to do so without legal justification. In a broader policy view, such a decision discourages consortium applicants from participating in the e-rate program. This contravenes the Commission's well-known desire to "encourage schools and libraries to aggregate their demand with others to create a consortium with sufficient demand to attract competitors and thereby negotiate lower rates."<sup>46</sup>

SLD's funding denial decisions should be reversed and the applications remanded to SLD for full consideration of funding.

Respectfully Submitted,



Michael Zanon  
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Information Resources Management Div.  
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Dated: March 22, 2006

cc:

The Honorable Ron Wyden, Senator from Oregon  
The Honorable Gordon Smith, Senator from Oregon  
The Honorable Theodore Kulongoski, Governor for Oregon  
The Honorable Susan Castille, State Superintendent for Public Instruction for Oregon  
Lindsay Ball, Director, Department of Administrative Services

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<sup>46</sup> *Universal Service Order*, 12 FCC Red 8776, 9027 as cited by *Request for Review by Project Interconnect, Brooklyn Park, Minnesota, Federal-State Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Files No. SLD-146858, 146854.



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- Exhibit 4: October 14, 2005, USAC/SLD Program Integrity Assurance Request #2, and DAS' response
- Exhibit 5: October 17, 2005, USAC/SLD Program Integrity Assurance Request #3, and DAS' response
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- Exhibit 13: December 15, 2005, USAC/SLD Program Integrity Assurance Request #11, and DAS' response
- Exhibit 14: December 23, 2005, USAC/SLD Program Integrity Assurance Request #12, and DAS' response
- Exhibit 15: DAS' December 27, 2005, e-mail and USAC/SLD Program Integrity Assurance letter dated December 29, 2005, itemizing additional information required

- Exhibit 16: FCC Clackamas Education Service District Order, File No. SLD-147-541, CC Docket No. 96-45 and 97-21, September 26, 2001
- Exhibit 17: DAS' Block 4 Hierarchy, showing relationships of Education Service *Districts, School Districts, and Schools*
- Exhibit 18: Oregon Revised Statute (ORS) 334.005, 334.010, 334.020, and 334.125 relating to education service districts
- Exhibit 19: SLD online instructions regarding Educational Service Agencies
- Exhibit 20: SLD online instructions regarding Eligibility Table for Educational Service Agencies
- Exhibit 21: SLD online instructions for letters of agency for consortia,
- Exhibit 22: SLD Train-the-Trainer training material, September 9-10, 2002, "Avoiding Common PIA Errors", slide 8
- Exhibit 23: SLD Train-the-Trainer training material, September 24-26, 2003, "Consortia", slides 2 and 4





## Universal Service Administrative Company

Schools & Libraries Division

### FUNDING COMMITMENT DECISION LETTER (Funding Year 2005: 07/01/2005 - 06/30/2006)

January 25, 2006

Patricia K. Middelburg  
OREGON DEPARTMENT OF ADMINISTRATIVE SERVICES  
DAS-Information Resources Mgmt Division  
955 Center Street NE, U510  
Salem, OR 97301

Re: Form 471 Application Number: 460103  
Funding Year 2005: 07/01/2005 - 06/30/2006  
Billed Entity Number: 209473  
Billed Entity FCC RN: 001269504  
Applicant's Form Identifier: FY2005 Frame Relay

# RECEIVED

JAN 31 2006

State of Oregon DAS  
State Data Center

Thank you for your Funding Year 2005 E-rate application and for any assistance you provided throughout our review. Here is the current status of the funding request(s) featured in the Funding Commitment Report at the end of this letter.

- The amount, \$1,224,775.83 is "Denied."

Please refer to the Funding Commitment Report on the page following this letter for specific funding request decisions and explanations.

The Important Reminders and Deadlines immediately preceding this letter are provided to assist you throughout the application process.

#### NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full
- Review technology planning approval requirements
- Review CIPA Requirements
- File Form 486
- Invoice the SLD using the Form 474 (service provider) or Form 472 (Billed Entity) - as products and services are being delivered and billed

#### FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the Funding Request Number(s) (ERNs) from your application. The SLD is also sending this information to your service provider(s) so preparations can be made to begin implementing your E-rate discount(s) after you file your Form 486. Immediately preceding the Funding Commitment Report, you will find a guide that provides a definition for each line of the Report.

#### TO APPEAL THIS DECISION:

If you wish to appeal a decision in this letter, your appeal must be received by the SLD or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) e-mail address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
  - Appellant name,

- Applicant name and service provider name, if different from appellant,
  - Applicant BEN and service provider SPIN,
  - Form 471 Application Number as assigned by the SLD,
  - "Funding Commitment Decision Letter for Funding Year 2005," AND
  - The exact text or the decision that you are appealing.
3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
  4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by the SLD's decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by the SLD's decision.
  5. Provide an authorized signature on your letter of appeal.

To submit your appeal to the SLD by e-mail, use the "Submit a Question" feature on our web site at [www.sl.universalservice.org](http://www.sl.universalservice.org). Click "Continue," choose "Appeals" from the Topics Inquiry on the lower portion of your screen, and click "Go" to begin your appeal submission. The system will prompt you through the process. The SLD will automatically reply to incoming e-mails to confirm receipt.

To submit your appeal to the SLD by fax, fax your appeal to (973) 599-6542.

To submit your appeal to the SLD on paper, send your appeal to:

Letter of Appeal  
 Schools and Libraries Division  
 Box 125 - Correspondence Unit  
 80 South Jefferson Road  
 Whippany, NJ 07981

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use either the electronic filing options described in the "Appeals Procedure" posted in the Reference Area of our web site. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

#### NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Universal Service Support Mechanism. Applicants who have received funding commitments continue to be subject to audits and other reviews that the Universal Service Administrative Company (USAC) and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. The SLD may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by the SLD, the applicant, or the service provider. The SLD, and other appropriate authorities (including but not limited to USAC and the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

Schools and Libraries Division  
 Universal Service Administrative Company



## A GUIDE TO THE FUNDING COMMITMENT REPORT

A report for each E-rate funding request from your application is attached to this letter. We are providing the following definitions for the items in that report.

**FORM 471 APPLICATION NUMBER:** The unique identifier assigned to a Form 471 application by the SLD.

**FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each Block 5 of your Form 471. This number is used to report to applicants and service providers the status of individual funding requests submitted on a Form 471.

**FUNDING STATUS:** Each FRN will have one of the following definitions:

1. An FRN that is "Funded" is approved at the level that the SLD determined is appropriate for this FRN. The funding level will generally be the level requested unless the SLD determines during the application review process that some adjustment is appropriate.
2. An FRN that is "Not Funded" is one for which no funds were committed. The reason for the decision will be briefly explained in the "Funding Commitment Decision Explanation." An FRN may be "Not Funded" because the request does not comply with program rules, or because the total amount of funding available for this Funding Year was insufficient to fund all requests.
3. An FRN that is "As Yet Unfunded" reflects a temporary status that is assigned to an FRN when the SLD is uncertain at the time the letter is generated whether there will be sufficient funds to make commitments for requests for Internal Connections at a particular discount level. For example, if your application included requests for discounts on both Telecommunications Services and Internal Connections, you might receive a letter with funding commitments for your Telecommunications Services funding requests and a message that your Internal Connections requests are "As Yet Unfunded." You would receive one or more subsequent letters regarding the funding decision on your Internal Connections requests.

**CATEGORY OF SERVICE:** The type of service ordered from the service provider, as shown on your Form 471.

**FORM 470 APPLICATION NUMBER:** The Form 470 Application Number associated with this FRN from Block 5, Item 12 of the Form 471.

**SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support mechanisms. A SPIN is also used to verify delivery of services and to arrange for payment.

**SERVICE PROVIDER NAME:** The legal name of the service provider.

**CONTRACT NUMBER:** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on your Form 471.

**BILLING ACCOUNT NUMBER:** The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.

**SERVICE START DATE:** The Service Start Date for this FRN from Block 5, Item 19 of your Form 471.

**CONTRACT EXPIRATION DATE:** The Contract Expiration Date for this FRN from Block 5, Item 20b of your Form 471. This will be present only if a contract expiration date was provided on your Form 471.

**SITE IDENTIFIER:** The Entity Number listed in Form 471, Block 5, Item 22a. This will be present only for "site specific" FRNs.

**NUMBER OF MONTHS RECURRING SERVICE PROVIDED IN FUNDING YEAR:** The number of months of service that has been approved in the funding year. This will be present only for recurring services.

**ANNUAL PRE-DISCOUNT AMOUNT FOR ELIGIBLE RECURRING CHARGES:** Eligible monthly pre-discount amount approved for recurring charges multiplied by number of months